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Book Review

James T. Flaherty

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page on our pathetic state of affairs which seemingly demand tremendous volumes of laws and still more laws as so many lures to allow the drive for basic social change to radiate into vacancy; yes, so many laws to keep a near disjointed society from running wild and lead in their common lack of observance to contempt for all laws. Alas, not even a page to guard against the quagmire of sentimentality and naïveté which the author's many commentaries engender.

It is now winter as the reviewer pens these lines and it is figuratively speaking, the bleak winter of our political and economic discontent. Our country is being choked to death, figuratively speaking, by its own pulsating and ulcerating tonsils but Senator Kennedy would negate any fundamental change from traditional thoughts and actions. Another winter is with us and correspondingly on the human scene more short term sops and sterile stock and trade slogans swing forth to do battle with the social dragons among us. In vain do we listen to the mass media pulpsters and literary hucksters who would treat the malaise about us with the dilettante's hand. It is winter and another volume lies before me full of sound and some fury signifying "abnegation."

*Reviewed by James T. Flaherty**

THE LOST ART OF CROSS EXAMINATION, by J. W. Ehrlich (G. P. Putnam Sons, New York, 1970) pp. 192.

Man flocks to the arena where combatant meets combatant, be it a coliseum, rink, field, court, or ring, be it man versus man, animal versus animal, or man versus animal. Participation in this form of psychological release as a vicarious experience is as old as mankind. In his introduction, Mr. Percy Foreman warns the reader to expect the trial lawyer to be "a man who relishes a fight," whose "devastating courtroom performance" combines the art and skill of a lawyer and a professional boxer. Author Ehrlich gives early evidence of his killer instincts—the killer instincts of the professional matador who will toy, fence, and play with the bull; who will tease and torment; who will solicit the rhythmic olé from the fascinated crowd after a particularly exciting play, and then thrust home.

The author notes the distinction between the theory of a trial and the reality of trial—the theory based on the book, and the reality founded on the frailties of human nature. An interesting conflict occurs when he denigrates the validity of the human senses (sight, sound, memory, etc.), then admits his own use of his senses as indispensable tools of the trade. (Whose ox?). It was rather unkind to suggest that the easily confused witness is untruthful. When witness X says it was this way and

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witness Y says it was that way, it does present a patent inconsistency. However, based on Ehrlich's premise, this phenomenon may be the result of admittedly unreliable human senses. It does not follow as a fact, therefore, that one or both of the witnesses has lied. Possibly both are telling the truth as they know it. A lie, after all, is a statement consciously contrary to the observations of the senses. The chapter on the *Eyewitness* is truly based on reality, sustaining the premise of human frailty as to sensory perception (or sensory deception).

Other chapters present sometimes comical and sometimes sad stories, but always exciting reading. One attempts to classify *Howl and Other Poems* (charged as being lewd, obscene and indecent) as a classic "which, if suppressed, would have joined a long historic list of banned books, including Homer's *Odysseus*, Cervantes' *Don Quixote*, DeFoe's *Robinson Crusoe*, Swift's *Gulliver's Travels*, Goethe's *Faust*, Whitman's *Leaves of Grass*, Hawthorne's *Scarlet Letter*, and the Holy Scriptures." Such books, suppressed for political reasons, are hardly comparable with the allegedly obscene books. To suggest that *Howl*, if it had been suppressed, would "become part of the accepted literature or even the venerated classics . . ." is an interesting insertion of comic relief.

The chapter on *Trial by Jury* should be required reading of all citizens, for it reminds us that the petit and grand juries are designed as protection against state abuse, not as tools for abuse, with two juries as an attempted double safeguard. Many people either never knew, or those that did know have forgotten that a petit jury functions only after the grand jury. Admittedly, the system can be only as good as the unfortunately frail humans who try to live with it.

In the first half of his book the author did an excellent job of throwing himself into a potential literary masterpiece, recreating the excitement and interest of a trial. Then Ehrlich apparently lost interest and dashed off the rest of the book as one who had made his point and now must fill to book size. Nevertheless, for the trial attorney, Ehrlich presents a series of lively reminiscences; for the non-trial attorney, a fascinating revelation; for the layman, perhaps science fiction; for the law student, required reading.

The title remains a mystery. Why suggest cross-examination is a "Lost Art"? An "Art" to be sure, but why "Lost"?